In the Supreme Court

OF THE

United States

Office Supreme Court, U. S.
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OCTOBER TERM, 1940

No. 696

MILO W. BEKINS and REED J. BEKINS, as trustees, appointed by the will of Martin Bekins, deceased; MILO W. BEKINS and REED J. BEKINS, as trustees, appointed by the will of Katherine Bekins, deceased; JAMES IRVINE, J. R. MASON, JAMES H. JORDAN, A. HEBER WINDER, as trustee of Eva A. Parrington Trust; C. A. MOSS, and H. E. CURTIS, creditors of Lindsay-Strathmore Irrigation District,

Petitioners,

vs.

LINDSAY-STRATHMORE IRRIGATION DISTRICT, an insolvent taxing agency,

Respondent.

PETITION FOR WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit and BRIEF IN SUPPORT THEREOF.

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MILO W. BEKINS and REED J. BEKINS, as trustees, appointed by the will of Martin Bekins, deceased; MILO W. BEKINS and REED J. BEKINS, as trustees, appointed by the will of Katherine Bekins, deceased; JAMES IRVINE, J. R. MASON, JAMES H. JORDAN, A. HEBER WINDER, as trustee of Eva A. Parrington Trust; C. A. MOSS, and H. E. CURTIS, creditors of Lindsay-Strathmore Irrigation District,

Petitioners,

vs.

LINDSAY-STRATHMORE IRRIGATION DISTRICT, an insolvent taxing agency,

Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the decision (R. 595) of the Circuit Court of Appeals for the Ninth Circuit made in the above entitled cause on September 5, 1940, which affirms the interlocutory decree of the District Court for the Southern District of California, Northern Division, rendered against Petitioners on March 11, 1939. (R. 187.)

OPINIONS BELOW.

Opinion of the Trial Court (R. 131), 25 Fed. Sup. 988.

Opinion of the Circuit Court of Appeals (R. 536), 114 Fed. (2d) 680.

JURISDICTION.

The decision of the Circuit Court of Appeals was rendered September 5, 1940. (R. 595.) A Petition for Rehearing was filed October 4, 1940 (R. 597 and denied October 15, 1940. (R. 597.) The mandate was stayed until disposition of the case by this Court. (R. 597.) The Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code (28 U. S. C., Paragraph 347(a)).

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a proceeding brought by the respondent Lindsay-Strathmore Irrigation District, a California Irrigation District, for readjustment of its debts under what is now Chapter IX of the Bankruptcy Act of 1898 as amended. (11 U.S.C., Sections 401-404.)

The petitioners own general obligation public bonds of the district in the principal amount of $156,000 (R. 93) with interest from July 1, 1933 partly at 6% and partly at 7%. The principal of the bonded debt of the district involved is $1,427,000.00. Petitioners contend that $123,195.00 of their principal and coupons with interest are in a separate class from all other claims.

The respondent filed its petition in the District Court on September 21, 1937. (R. 5.) A motion to dismiss was granted by the trial Court on December 2, 1937, solely upon the grounds that the statute was deemed unconstitutional. (R. 50.) Thereafter this Court reversed the judgment of dismissal. (*U. S. v. Bekins,* 304 U. S. 27, 58 S. Ct. 811.) The case was subsequently heard and an interlocutory decree was entered by the trial Court on March 11, 1939 (R. 187), and the decision was affirmed by the Court below.

Our view of the case briefly stated.

At the time that this Court rendered its opinion in the former case, holding Chapter IX constitutional, the question as to the nature and character of a Cali-

fornia irrigation district was in some doubt. The Solicitor General and the district both argued in their briefs and orally before this Court, as did Congressman Sumners on behalf of the Judiciary Committee of the House of Representatives, that a California irrigation district did not partake sufficiently of the sovereignty of the State to prevent the application of the Act and that its functions were proprietary and not governmental, and they supported their contentions with citations of California authorities. Since rendition of that opinion, however, the Supreme Court of California has set the matter at rest in the case of *El Camino Irrigation District v. El Camino Land Corporation,* 12 Cal. (2d) 378, 85 Pac. (2d) 123, and subsequent cases, and has unequivocally declared that *all* of the functions of a California irrigation district are *exclusively governmental* and that its property is state property.

This district is not a mere incorporation of landowners—it is the State of California operating through an agency of the Legislature. The preservation and distribution of water for irrigation, the reclamation of land, drainage and flood control is a governmental function when done by the State. This Court has taken note of the importance of irrigation to the general welfare in the arid west. (*Brush v. Commissioner of Internal Revenue,* 300 U. S. 352.) Petitioners now return to this Court with the plea that in view of the *El Camino* case and other later state decisions cited in our brief, and of the separability clause and the provisions of the Act itself, pro-

hibiting interference with governmental powers, and in view of the decision of this Court in the *Bekins* case that Chapter IX is so drawn as to prohibit such interference, Chapter IX simply does not apply to a California irrigation district, and that the decision of the Circuit Court of Appeals is in conflict with the prior holding in *U. S. v. Bekins.* This Court should follow the local law established by recent decisions of the California Supreme Court on the question of the governmental character of this district and hold the Act inapplicable.

The cause is res judicata.

This district with the same plan of composition was in the same District Court under the first Chapter IX (Sec. 80) of the Bankruptcy Act back in 1935. The District Court entered its decree in that case confirming the identical plan here involved. (R. 452.) An appeal was taken to the Circuit Court of Appeals where the decision was reversed (R. 469) and judgment of dismissal was entered below (R. 470), the judgment becoming final. (R. 470.) However, the decree confirming the plan of composition in the case became binding upon all bondholders except the petitioners in the instant case. *Chicot County Drainage District v. Baxter State Bank* (308 U. S. 371).

The factual situation.

The Lindsay-Strathmore Irrigation District is situated in Tulare County, California, and has an area of 15,250 acres. Approximately 9000 acres of this area are highly improved and consist principally of

8300 acres of citrus acreage. The district has no water for the remaining acreage (R. 386), and this area has been owned by the district for a considerable length of time and is rented for pasture. The Court erred in attributing the ownership of this land by the district to the tax situation.

The bond issues of the district consist of a first issue of $1,192,000 of coupon bonds bearing interest at 6%, dated July 1, 1916, and maturing from 1933 to 1946, and of a second issue of $235,000 of coupon bonds bearing interest at 6%, dated October 1, 1918, and maturing from 1933 to 1948. (R. 6-7.) The debt as of October 1, 1937 as stated in the petition consists of these two bond issues, plus the unpaid interest amounting to $439,085.15, a total of $1,866,085.15. The total matured and unpaid obligations on October 1, 1938 amounted to $967,920.57. The district quit paying its maturing principal and interest shortly after July 1, 1933.

In 1932 the district levied the full amount required by Section 39 of the California Irrigation Districts Act, which section is set forth in the appendix. (p. iii.) On July 1, 1933 it did not have sufficient money collected to pay its maturing obligations. It applied to the Districts Securities Commission for an order permitting it to levy assessments pursuant to Section 11 of the Districts Securities Commission Act which section is set forth in the Appendix (p. i) and provides for assessments not in accordance with the obligations which mature, but in accordance with a determination, made without notice, as to the ability

of the lands to pay. This legislation is in the form of moratorium legislation.

Shortly thereafter a refunding plan was proposed to the bondholders and an application made to the Reconstruction Finance Corporation (hereinafter referred to as the R.F.C.) for a loan in October 1933 under the provisions of Section 36 of the Emergency Farm Mortgage Act. (Title 43, U.S.C., Section 403.) The R.F.C. granted a loan to the district on May 16, 1934 in the amount of $859,000, prior to the enactment of the first municipal bankruptcy act. An 85% deposit of bonds was obtained before the prior petition was filed under Section 80. (R. 260.) The petition was heard November 18, 1935 (R. 423) and disbursal of the loan was made April 29, 1937 at the rate of 59.978 cents on the dollar of principal as the plan provides and in addition thereto interest was paid to the depositing bondholders at the rate of 4% on the disbursal price from November 1, 1934, or the date of deposit by each bondholder, until disbursal of the loan by the R.F.C., and has been paid subsequently at the same rate to the R.F.C. Only the petitioners have received no interest. They have been deprived of interest since 1933. Approval of this discrimination by the Courts below is cited as error.

Procedure for liquidation of deposited bonds.

The original bondholders deposited their bonds under escrow agreements (R. 254) and authorized the depositary to surrender the bonds "upon such payment therefor" to the district or its agent or the

R.F.C. or any agency of the United States entitled thereto and provided that the bondholder "consents to and accepts the plan of refinancing and readjustment".

Attached to these instructions was a receipt by the district in which the district "acknowledges receipts of the foregoing described bonds" as held subject to the instructions. (R. 254, 259.) The district appointed one Alvin M. Hostetter to receive delivery of the deposited bonds from the bank. (R. 263.) Hostetter executed a trust agreement dated April 29, 1937 (R. 266), reciting that he is owner of the original bonds and is willing to make them available for refinancing and in the trust agreement Hostetter appointed a dummy, one W. J. Burns, of Phoenix, Arizona, with authority to execute a note and trust deed and purportedly sold, transferred and delivered to Burns as trustee the bonds of the district, and authorized him to receive the proceeds of the R.F.C. loan and provided that upon receipt of the proceeds from Burns, Hostetter was to have no further "right, title or interest in any of the bonds". Thus Hostetter and the original bondholders cancelled out all of their beneficial interest in the bonds and thereafter Burns acts in no respect on behalf of Hostetter or the original bondholders. In this respect the mechanics of the transaction differ from that in the case of *Luehrmann v. Drainage District No. 7, of Poinsett County, Ark.*, 104 Fed. (2d) 697, in which this Court denied certiorari. (*Haverstick v. Drainage District No. 7*, 308 U. S. 604.) In that case the Circuit Court said:

> "The trustee Chapman, acting for the bondholders who had accepted the original offer, filed acceptance of the proposed plan;" (700)

and further:

> "For this reason we think these classes of bondholders and judgment creditors so far retained their original status as entitled them to be counted as acceptors of this composition plan." (701.)

In the first decision of the trial Court in that case the Court denied the motions to dismiss and declared:

> "In this particular case, however, no agency of the government holds the old securities, but they are in fact held by a trustee who appears to have taken over legal title from the original bondholders, the larger portion of whom transferred the bonds to the trustee through the agency of the Bondholders' Protective Committee. Other bonds purchased later went into the hands of the trustees by the act of the original bondholders in delivering the bonds to the trustee, and were placed as collateral to the trustee's note, just as in the first instance. The judgment creditors assigned their judgments without recourse direct to the trustee."
>
> *In re Drainage District No. 7 of Poinsett County, Ark.,* 21 Fed. Supp. 798, 801.

In the *Luehrmann* case the Court bases its decision upon the question of consent on the basis that the original bondholders had come into the new case and given their consent and that they had a sufficient

interest in the bonds to consent, whereas in the instant case the theory of the decision seems to be that the R.F.C. by reason of Subdivision (j) of Section 83 and the other provisions of the Municipal Bankruptcy Act, which state that any agency of the Government having an interest in bonds has its interest at the full face amount, can import validity to the consent.

The R.F.C. agreement with the district (the resolution granting the loan) (R. 202) provided that the bondholders might appoint an agent who would make a note to the R.F.C. This procedure was not carried out. Burns certainly was not an agent of the original bondholders.

Under the trust agreement Burns was to receive no compensation and was not to be liable on the notes to the R.F.C. The collateral note of Burns to the R.F.C. (R. 272) identifies Burns as a trustee, but does not say for whom he is trustee. In fact in no place in any of these transactions is there any provision for a beneficiary of the interest in the original bonds over and above the amount of the R.F.C. loan. Burns acknowledges himself as bound to the R.F.C. in the amount of the loan plus 4% interest. While the R.F.C. is authorized to collect the collateral and to sell the collateral, the note provides that the R.F.C. can apply all cash proceeds first to the payment of expenses, second to the payment of interest, third to the payment of principal, and fourth "any balance remaining shall be paid to the maker hereof as Trustee, or to the person or persons law-

fully entitled thereto". But the trustee has no interest in the collateral and Hostetter and the original bondholders surrendered their interest and therefore the remaining interest of a beneficial character must belong to the Lindsay-Strathmore Irrigation District. Burns' expenses were paid by Mr. McBride (counsel for the district). (R. 402.) Petitioners' view of the situation is that the Lindsay-Strathmore Irrigation District has a beneficial interest in those bonds. They are "owned, held, or controlled" by said district and cannot be counted in determining whether the percentage of creditors required by Section 83 (d) has been obtained.

Petitioners' view is that by this transaction the R.F.C. became a creditor of *Burns* and not a creditor of the district, and that the only interest of the R.F.C. in the bonds is a limited one, namely the right of a pledgee to collect out of the collateral. Any remaining interest over and above *has been surrendered to and for the benefit of the district.* The loan was made by the R.F.C. as shown by its instructions to the Federal Reserve Bank when the money was advanced (R. 278) "to enable the above named District to refinance its indebtedness". This was not some ultimate purpose, but was the immediate purpose. The purpose of the advance was necessarily to effect an immediate reduction in debt.

If the beneficial interest in these bonds is held by the district then they are bonds "owned, held, or controlled" by the district, and in spite of the provision

in the statute[1] providing that the interest of the R.F.C. is a full interest, the bonds are ineffective as the basis of the requisite consent to the plan. On the other hand, if they are bonds in which the R.F.C. has the full interest, including the beneficial interest, then there was discrimination because the R.F.C. received interest at 4% which is denied the non-depositing bondholders, the petitioners.

Fairness of the plan.

The trial Court in the former bankruptcy proceedings (R. 434) determined that the district comprises 15,234 acres of land. That 9000 acres is planted to orchards of which 8300 is citrus fruits.

> "that the remainder of the land in said district is unplanted and practically all of such remaining land is unirrigated; that 5,256.4 acres of land within said district has been deeded to said district for delinquent assessments thereof, and that the greater portion of said land is not planted to any permanent crop; that the dependable water supply of said district is not sufficient for the proper irrigation of the lands therein that are now planted as aforesaid, and by reason thereof it is impossible for said unplanted lands to be used for any other purpose than grazing or dry farming;"

The trial Court in the instant proceeding said of this acreage:

> "that as the result of such recurring unredeemed delinquencies the District has acquired and now

1. "Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be deemed a creditor in the amount of the full face value thereof." Sec. 82.

owns approximately one-third of the area within the District. Thus as a result of the general depleted condition of the District, two-thirds of the lands therein were expected to bear financial burdens, including the bond service requirements, of the entire area of the District."

"There is little need of mention of the District's financial plight * * *."

In re Lindsay-Strathmore Irrigation District, 25 Fed. Supp. 988, at 990.

This basis of the Court's decision is insubstantial.

The condition of the district as shown December 26, 1935 was that it had assets of over two million dollars. (R. 441.) These are corporate assets, in addition to the power of taxation. Petitioners have conceded that the district technically was not able to pay its obligations as they matured, but they have never conceded that the district is insolvent in the sense that its assets are less than its liabilities.

Exhibit FF which was the financial statement of the district dated October 31, 1935 shows an excess of assets over liabilities of $731,544.06. (R. 480.) When this case was tried under the first bankruptcy act the Court in its findings specifically determined the amount of assets and liabilities, but not so in the instant case. We have an absence of special findings on the question of assets and liabilities. However, the findings of the first trial Court were before the second Court, and the first Court found that the district had a working capital of $735,864.18 over and above its

entire original bonded indebtedness. This is an adjudication.

On the question of assessments it is true that the tax delinquency of the district rose as high as 47%. This was in 1932. But the average delinquency from the years 1931 to 1937, inclusive, even during the year the assessments were collected, was less than 13%.

From 1916 to 1937 the total tax levied was $4,001,773.05 and the actual taxes collected to *date of tax sale* was $3,383,054.65 or but one-half per cent over the normal 15%. (R. 331.) Adding water tolls collected in the amount of $2,515,324.97 (R. 330) the delinquency is in round figures 10%. Under Sections 39f and 55 of the California Irrigation District Act, Cal. Stat. 1925, p. 501, and 1931, p. 246, water tolls may be levied in lieu of assessments and if unpaid become a lien on the land.

The California Irrigation District Act provides for and allows a normal delinquency of 15%. (Sec. 60, California Irrigation District Act.) In other words, the district collected $102.00 for every $100.00 of its budget. Further, if water tolls are added to taxes, the delinquency is insignificant. The resources of the district on September 30, 1938 show a working capital of $771,693.72 which is a surplus over and above the bonded indebtedness of the district and an improvement in the district since the statement of 1935. (R. 348.)

During the last ten years the district has spent approximately one million dollars in litigation, which litigation is now settled. It seems unfair that where

a district has been able to meet this unusual and unexpected expense of a million dollars, amounting to two-thirds of its bonded indebtedness, it should be permitted to cut this bond debt to sixty cents on the dollar principal with nothing for interest. (R. 382, 379.)

Furthermore, during the period of default the district made an investment in capital assets amounting to over $300,000 for water stock and the like. (R. 382.) It deposited $100,000 with the R.F.C. as a surplus or pledge against liability to the petitioners. (R. 383.) It had in addition cash on hand at the end of the season and just before new tax money comes in (September 30, 1938) $121, 332.32. (R. 347.)

Classification of creditors.

The bonds are all general obligation bonds. Sections 52 and 61(a) of the California Irrigation District Act (Appendix pp. vi, vii) provides for the payment of matured bonds and coupons in the order of presentation to the treasurer of the district. When there are not sufficient funds on hand to pay the claims so presented they are registered in the order of presentation and payment is then made in the order of presentation. It is petitioners' contention, therefore, that when bonds and coupons have been so presented, the priority is *provided by law* and attaches to the claim, and such claim should be classified separately in accordance with this order of presentation. The *undisputed* facts in the case are that the petitioners presented their matured bonds and coupons to the treasurer at the times set forth in their respective claims which were

filed in the cause. (R. 392.) The claims of the petitioners show the exact dates of presentation of each matured obligation. (R. 38, 64, 72, 75, 78, 80.) On the other hand, neither the claim of Burns (R. 43) nor that of the R.F.C. (R. 40) claims interest or shows any date of presentation of any matured obligation. The trial Court found at R. 165 that all the indebtedness of the district is payable without preference out of funds derived from the same source and all creditors constitute one class. Although this point of the priority of these registered bonds and coupons was one of the most vital points in the trial of this case and was a subject of a number of amicus curiae briefs in the Circuit Court of Appeals, yet the subject was not even touched upon by that Court in its opinion, except to refer to its opinion filed the same day in the case of *West Coast Life Insurance Co. v. Merced Irrigation District,* 114 Fed. (2d) 654 at 672, where the Court held that Section 52 does not give a *preference by law.* Section 83(b) of the Bankruptcy Act requires separate classification of claims enjoying a preference provided by law. The Court seems to suggest (at page 673) that the bankruptcy power is supreme and rights must be decided by the Bankruptcy Act since it is superior to all State laws upon the subject and that to recognize this claimed priority would defeat the purpose of Chapter IX.

QUESTIONS PRESENTED.

(1) a. Does the Bankruptcy Act extend jurisdiction in bankruptcy over the Lindsay-Strathmore Irrigation District, in light of the holdings of the Supreme Court of California, rendered since the decision in *U. S. v. Bekins,* 304 U. S. 27, to the effect that the functions of a California Irrigation District are exclusively governmental, and considering the Act itself as held by this Court in *U. S. v. Bekins* forbids any interference with the governmental powers of the district? b. After the decision in *U. S. v. Bekins,* the highest Court in California has determined that the property of these districts is state property and in effect, we contend, that they are the state. How then can bankruptcy extend to them under our Constitution?

(2) Is it *res judicata* as we contend, that the plan of composition here presented cannot be made binding upon petitioners? The District Court in a prior proceeding under Section 80 of the Bankruptcy Act has held in compliance with the mandate of the Circuit Court of Appeals as to the identical plan of composition, and between the same parties seeking in substance the same decree, that the attempted enforcement of the bankruptcy plan is unconstitutional as between these parties. Does not the decree thus rendered also determine that the plan is unfair?

(3) Where the bondholders accepted the plan of composition and surrendered their interest in the bonds to a person called a trustee, who is not trustee for the bondholders nor for the R.F.C., and such

trustee executed a note to the R.F.C. to secure a loan of money with which the trustee paid off the former bondholders, can the consent of such a trustee to the plan be counted at the face amount of such bonds?

(4) Where a former decree puts the plan into effect and some parties fail to appeal, is the plan not "executed out of Court" because it is *res judicata* as to such parties?

(5) Where 4% interest, amounting to approximately $150.00 per $1000.00 bond, has been paid to the former consenting bondholders and to the R.F.C., which interest is denied non-consenting bondholders, is there unlawful discrimination and coercion?

(6) Is a plan of composition which offers 60¢ per dollar of principal (and none of the interest) fair and equitable where the undisputed assets of a bankrupt greatly exceed the amount offered to the creditors by the plan of composition, though the district has a present inability to pay its obligations as they mature? May a plan of composition in such a case give to creditors less than the amount of principal due on their claims? Is not the limit of relief extension of time and reduction of interest?

(7) Is a plan of composition accepted in good faith when the consenting bondholders will get exactly the amount they paid for their bonds, and when they decline to comply with Section 83(a) of the Bankruptcy Act requiring a statement of the beneficial interest in the bonds?

(8) When the local law provides that obligations of the district shall be paid in the order of their

presentation to the treasurer after maturity, and the petitioners are the only creditors who have preserved their rights by presenting their matured bonds and coupons to the treasurer and filing their proofs of claim in the bankruptcy court, are such claims preferred by law within the meaning of Section 83(b) of the Bankruptcy Act and must they be recognized in this composition proceeding and classed separately as we contend?

(Additional questions presented are set forth in the Reasons for Granting Writ of Certiorari, which immediately follow.)

REASONS FOR GRANTING WRIT OF CERTIORARI.

There are a number of separate reasons, each falling within the scope of Rule 38, why a writ of certiorari should be granted in this case, which are briefly summarized as follows:

1. This case clearly presents a question of wide public interest, of whether the Municipal Bankruptcy Act (present Chapter IX of the Bankruptcy Act of 1898, as amended, 11 U.S.C.A., Pars. 401-404), applies to a state agency where the highest Courts of the state have repeatedly held that its functions are *exclusively governmental* and that its property is state owned. This Court, in *United States v. Bekins,* 304 U.S. 27, held in effect that this statute was

> "carefully drawn so as not to impinge upon the sovereignty of the state * * *",

and that the Committee on the Judiciary was correct in stating that the statute

> "expressly avoids any restriction on the powers of the states or their arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political subdivision is permitted."

The Committee on the Judiciary, as well as this Court, evidently had in mind the provisions of Section 83 (c) (11 U.S.C.A. Sec. 403), which provides that the Court "shall not, by any order or decree, in the proceeding or otherwise interfere with (a) any of the political or governmental powers of the petitioner", and a similar provision in Section 83 (i). This Court, in impliedly holding in the *Bekins* case that the statute is applicable to a California irrigation district, necessarily did so upon the basis of the argument of counsel for the district, the Solicitor General, and Congressman Sumners, to the effect (1) that a California irrigation district did not partake sufficiently of the sovereignty of the state to prevent the application of the statute, and that its functions were proprietary and not governmental, or (2) that some of its functions were proprietary, so that the statute could have some application under the separability clause contained in Section 83 (i). (The California decisions on the subject at the time of the decision of this Court were somewhat conflicting.) Any other basis would be absolutely inconsistent with the express provisions of the statute and the above quoted portions of this Court's opinion.

Since the decision of this Court in the Bekins case, however, the highest Court in California, in several decisions, has definitely held that irrigation districts in California are "agencies of the state whose functions are considered exclusively governmental; that it owns no lands in a proprietary sense, its property being owned by the state and held only for governmental purposes". *El Camino Irrigation District v. El Camino Land Corporations,* 12 Cal. (2d) 378 at 382-3; *Anderson-Cottonwood Irrigation District v. Klukkert,* 13 Cal. (2d) 191.

The *Bekins* case was argued April 7, 1938, and was decided by this Court on April 25, 1938, and a rehearing was denied May 23, 1938. Neither of the California cases was decided prior to November, 1938. If these state decisions had been before this Court when it decided the *Bekins* case, this Court could not consistently have decided that Chapter IX of the Bankruptcy Act, as amended, applies to a California irrigation district. It is likewise clear, from the foregoing extracts from the opinion of this Court in the *Bekins* case, that said statute was carefully drawn so as not to apply to agencies of the state whose functions are exclusively governmental and whose property is state owned. Hence the effect of the foregoing extracts from the *Bekins* case is that the statute was not intended to apply to a California irrigation district. The decision of the lower Courts to the effect that the statute does apply is thus directly contrary to the foregoing extracts from the opinion of this Court in the *Bekins* case, and with

the expressed provisions of the statute. It also conflicts with said state decisions on a question of local law, to wit, the nature and character of a California irrigation district.

In any event, this Court should determine whether the statute can be applied at all to a state agency whose functions are exclusively governmental. The "interference" occasioned by applying such a statute is well illustrated by the interlocutory decree in this case which decreed "That the petitioner deposit * * * the sum necessary to pay the holders of its outstanding bonds * * *" (R. 193.) The statute involved is of nationwide importance. Public corporations all over the nation are increasingly seeking to avail themselves of the provisions of the statute. Other federal Courts, contrary to the decision of the Circuit Court of Appeals in this case, have adopted the view that the statute does not apply to a political subdivision of the state exercising governmental functions exclusively. *Supreme Forest Woodmen's Circle, et al. v. City of Belton, Texas* (C.C.A. 5, Dec. 16, 1938), 100 Fed. (2d) 655; *Luehrmann v. Drainage District No. 7* (C.C.A. 8, June 13, 1939), 104 Fed. (2d) 696; *Drainage District No. 7 of Poinsett County, Arkansas* (D.C., E. C. of Ark., Dec. 1927), 21 Fed. Supp. 798; *In re City of Lauderdale, Florida* (S.D. Fla., Apr. 21, 1938), 23 Fed. Supp. 229. In each of these cases it was held that the statute did apply because the petitioner was *not* a political subdivision of the state exercising governmental functions exclusively.

A basic purpose of the certiorari jurisdiction is to preserve uniformity of decisions in the federal Courts upon points of federal law.

2. The Municipal Bankruptcy Act has been applied in the instant case to an irrigation district whose functions, according to the decision of the highest Court of the state, are exclusively governmental. This involves an important question of constitutional law, to wit, whether the bankruptcy power of Congress extends to the states and their agencies exercising governmental functions exclusively.

It was decided by this Court in *Ashton v. Cameron County Water Improvement District,* 298 U.S. 513, that it did not, because it might destroy the sovereignty of the state essential to its proper functioning under the Federal Constitution. This Court also held in the *Ashton* case that if the consent of the state was essential, the state in giving its consent would be impairing the obligation of contracts and that the state could not, by consent or submission, enlarge the powers of Congress.

The decision of this Court in the *Bekins* case was also by a divided Court (the personnel of this Court having changed in the meantime), but this Court did not overrule the *Ashton* case. On the contrary, this Court attempted to distinguish present Chapter IX of the Bankruptcy Act from the earlier statute involved in the *Ashton* case, on the ground that the present statute was so drawn as to prohibit any interfer-

ence with the governmental affairs of the state of a political subdivision of the state, and hence, did not conflict with its decision in the *Ashton* case. Accordingly, the constitutional questions involved have not been determined, unless the decision of the Court in the *Ashton* case is controlling and decisive. If this be true, the decision of the lower Courts is directly in conflict with said decision of this Court.

Only by decision of this Court can these constitutional questions be definitely determined. They are of paramount public importance and their correct determination should not be left in doubt.

3. This Court should determine, we submit, whether the judgment dismissing the proceedings filed under the original Municipal Bankruptcy Act, which involved a controversy between the same parties and the same plan of composition, and was rendered after a hearing on the merits, is *res judicata* of all issues between the same parties in this proceeding, which involves the same plan of composition and arises under a statute which we submit is identical in substance with the statute involved in the *Ashton* case.

This question is also of general public importance because there are a number of other proceedings pending throughout the nation involving the same fundamental question. Two of these proceedings were decided by the Circuit Court of Appeals of the United States on the same day that it rendered its decision in

the instant case and a petition for writ of certiorari has been filed with this Court in one of these cases.

4. We respectfully urge that this Court also determine that when holders of bonds have entirely surrendered all of their interest in their bonds, and R.F.C. has no interest in them other than as security for a note in its favor, executed by a dummy trustee under a trust in which no beneficiary is named, that neither the consent to the plan of composition by the dummy trustee nor by R.F.C. can be counted in determining whether the required percentage of creditors to the plan of composition has been obtained.

5. This Court should determine, we submit, that when the same plan of composition has been adjudicated in a former proceeding under the first Municipal Bankruptcy Act wherein the petitioners here appealed to the Circuit Court of Appeals and obtained a reversal of the cause, but no other creditors did so that such other creditors and their successors in interest are bound by the plan of composition, so that there is no validity to the consent which they now purport to give in the present proceeding.

6. We submit this Court ought to determine whether the question of the good faith of the acceptance of Burns, a dummy trustee having no interest in the securities voted in favor of the plan of composition, where the alleged bankrupt has contributed substantially to the funds paid the former bondholders, is subject to the same general principles of equity which were applied in the case of *American United*

Mutual Life Ins. Co. v. City of Avon Park, ... U.S. ....., 61 S. Ct. 157, to private interests. Further that the same test as to whether such securities are either "owned" or "controlled" is to be applied regardless of the fact that the R.F.C., an agency of the United States, is involved.

7. While interest has been paid to the original consenting bondholders in a substantial sum and such interest was not provided by the plan of composition and the same is denied to the bondholders who did not accept the plan of composition, this Court should determine whether the payment of such interest constituted an unlawful preference and is discriminatory. We also contend that this Court ought to determine further that where interest is provided by the plan of composition and has been paid to consenting bondholders, but is denied to non-consenting bondholders, the plan is unfair and discriminatory.

8. We respectfully submit that this Court should settle the meaning of the requirement in the municipal bankruptcy provisions that the plan of composition shall be "fair, equitable and for the best interests of the creditors", and particularly whether these provisions import the same meaning and are to be gauged by the same standards as similar provisions contained in other sections of the Bankruptcy Act dealing with private corporations. This is a question of great public importance and which has not yet been determined.

The meaning of this portion of the Bankruptcy Act is of paramount public importance, because it relates to one of the essentials required before any plan of

composition under the statute may be confirmed. The question of whether a plan of composition is "fair, equitable and for the best interests of creditors" arises in every proceeding filed under the statute and until the meaning of this language is definitely determined by this Court, there will be a flood of litigation as to whether this requirement of the statute has been met.

Specifically this case involves the important question: Whether, where the admitted assets of a public corporation exceed its liabilities, a plan of composition, which seeks to reduce the principal of the obligation, is "fair, equitable and for the best interests of the creditors". We contend that, under such circumstances, the relief which can be granted should be limited to a reduction of the interest rate and to an extension of time of payment. In other words, the relief should not be greater than the necessity of the debtor requires.

9. This Court should also determine the proper construction of the provisions of Section 83 (b) of the Municipal Bankruptcy Act relating to the classification of the claims of creditors, and specifically, whether the word "pledged" was used in its common meaning or in the technical sense of a bailment; also, whether the expression "claims which are otherwise given preference as provided by law" refers to the law of the state or federal law or general law; and whether the principle *ejusdem generis* applies to this clause. The Circuit Court of Appeals has refused effect to decisions of the highest State Court construing Section 52 of the California Irrigation District Act as requiring that matured bonds

and matured coupons of an irrigation district be paid in the order of their presentation for payment, and giving to bondholders the correlative right to require such payment. The Court below has determined this question of local law contrary to the decisions of the highest Court of California. We contend that, since the record shows that petitioners' matured bonds and coupons are the only ones presented for payment, under said Section 52 and under said State Court decisions petitioners have a preferential right to payment which is ignored by the plan of composition, that the refusal of the lower Court to classify petitioners in their separate class is directly contrary to the federal statute. The proper construction of the provisions of Section 83 (b) of the new Municipal Bankruptcy Act is of general public importance, for the classification of creditors is involved in every proceeding under the statute, and the particular construction of the provisions of the statute involved in this case is of general importance and should not be left in doubt. If the construction of these provisions of the federal statute is not set at rest by decision of this Court, there will be needless and unnecessary litigation on the subject in the Federal Courts.

We submit that any one of the reasons hereinabove set forth is a sufficient ground for this Court granting a writ of certiorari under Rule 38, and certainly collectively the reasons above set forth are abundantly sufficient.

Wherefore, petitioners pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Cir-

cuit Court of Appeals for the Ninth Circuit, commanding that Court to certify and to send to this Court for its review and determination a full and complete transcript of the record and of the proceedings of said Court in the case numbered and entitled in its dockets as "No. 9206, Milo W. Bekins and Reed J. Bekins, as trustees, appointed by the Will of Martin Bekins, Deceased, et al., Appellants, v. Lindsay-Strathmore Irrigation District, et al., Appellees", and that the decree of said Court be reversed by this Court with directions to dismiss the bill, and for such other relief as to this Court may seem proper.

Dated, Turlock, California,
January 6, 1941.

Milo W. Bekins and Reed J. Bekins, as trustees, appointed by the will of Martin Bekins, deceased,
Milo W. Bekins and Reed J. Bekins, as trustees, appointed by the will of Katherine Bekins, deceased,
James Irvine,
J. R. Mason,
James H. Jordan,
A. Heber Winder, as trustee of Eva A. Parrington Trust,
C. A. Moss,
H. E. Curtis.

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